

BOARD OF APPEALS CASE NO. 4850

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BEFORE THE

APPLICANT: John W. Miley

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ZONING HEARING EXAMINER

**REQUEST: Special Exception & variance
for construction services and suppliers use
in the Agricultural District; 3913 Emrick
Lane, Jarrettsville**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 9/23/98 & 9/30/98

HEARING DATE: November 25, 1998

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Record: 9/25/98 & 10/2/98

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ZONING HEARING EXAMINER'S DECISION

The Applicant, John W. Miley, appeared before the Hearing Examiner requesting a Special Exception to Section 267-53(H)(1), of the Harford County Code, to operate a construction service and supply business and variance to Section 267-34(C), Table II, to the required 80 foot rear yard setback and the required 40 foot side yard setback.

The subject parcel is located at 3913 Emrick Lane in the Fourth Election District. The parcel is identified as Parcel No. 38, in Grid 3-A, on Tax Map 24. The parcel contains 4.009 acres, m/l, all of which is zoned Agricultural.

Mr. John Miley appeared and testified that he has owned the subject parcel for about 10 years and that the property is improved by a single-family dwelling containing a small apartment rented to a tenant, a 40 foot by 40 foot garage, two 8 foot by 10 foot sheds, a gazebo, a 20 foot by 20 foot two-stall barn, and a swimming pool. The Applicant said he is requesting a Special Exception to operate his business on the subject parcel and to store the commercial vehicles on the parcel. The Applicant said he is also requesting a variance for the existing garage, which is 30 feet from the rear property line and about 37 feet from the side property line.

Mr. Miley said that he has operated his business from the subject parcel without complaint for a number of years and that denial of the Special Exception and variance will cause him to either terminate the business or require him to rent commercial property which he said he cannot afford to do.

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Ms. Diane Miley appeared and testified that she and her husband contribute to the maintenance of Emrick Lane and do more than their share to maintain Emrick Lane.

Ms. Barbara Kirschner appeared and testified that she did not feel the variance and Special Exception should be denied. Ms. Kirschner said that she does not live on Emrick Lane, but her property adjoins the Applicant's property in the rear and that she can see the garage on the Applicant's property, but that she cannot normally see the equipment.

Ms. Mary Grafton appeared and testified that she has lived on Emrick Lane all of her life and she described Emrick Lane as a private road with a mix of residential and agricultural uses. She said there are a number of homes located on Emrick Lane. She said the road is badly rutted with potholes and getting much worse. She alleged that much of the damage to the road, including the potholes, have been caused by Mr. Miley's equipment. She explained that she lives directly adjacent to the Applicant's home and is concerned with and affected by the noise, dust and fumes which emanate from the Applicant's property. She said the Applicant's driveway runs along her property line, that the Applicant's driveway is gravel and when the Applicant uses the driveway, dust from the equipment is created. She went on to testify that there is virtually no screening between her home and the Applicant's driveway and garage area and that she is able to see the equipment on the Applicant's property. Ms. Grafton also said she felt that the Applicant's use of the property greatly and adversely affects her property values.

Ms. Jo Mitchell appeared and testified that she resides on Emrick Lane and she said that Emrick Lane was in deplorable shape. She said she also hears continuous loud noise from the Miley property, including that of commercial equipment. Ms. Mitchell said she believes that the intensity of Mr. Miley's business has increased over the years.

Ms. Marian Pritt appeared and testified she was born and raised on Emrick Lane, which she described as a privately owned and maintained road. She testified she was opposed to Mr. Miley's request because she said that his equipment generates dust, dirt and makes a considerable amount of noise. She said she did not believe it was fair to the residents of Emrick Lane to have a commercial intrusion within the neighborhood.

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Mr. William Pritt, who also resides on Emrick Lane, appeared and testified that he believes the Applicant's use of the property will reduce his property value.

Mr. Nelson McClune testified that he resides on Emrick Lane and his observation is that Emrick Lane is worse than it has been for the last 10 years and it is getting worse.

Ms. Nancy Clayton appeared and testified that she has lived on Emrick Lane for approximately 33 years and while she was reluctant to testify against the Applicant, Ms. Clayton indicated that she has concern about the business use and its impact on the future of the residential neighborhood. Ms. Clayton also said she is concerned that if the Applicant's request is approved, other residents along Emrick Lane would apply for commercial uses on their properties.

Mr. Paul Clayton appeared and made the observation that the Applicant's trucks are making the road much worse and that the Applicant's business was disruptive to everyone due to the noise and dust which it generates.

The Staff Report of the department of Planning and Zoning recommends denial of the Applicant's request for a Special Exception and variance and provides:

"The business was commenced without property approvals, and the garage was constructed without an approved permit. The Department finds no physical justification for the variance and the Applicant has provided no justification concerning the property to warrant the requested variance. The use appears to be too intense for the site given the access from Emrick Lane and proximity of the adjacent residences."

CONCLUSION:

The Applicant is requesting a Special Exception for construction services and supplies, pursuant to Section 267-53(H)(1), which provides:

"Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten (10) feet wide shall be provided around all outside storage and parking areas when adjacent to a residential lot or visible from a public road."

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The Applicant is also requesting variances, pursuant to Section 267-34(C), Table II, which requires an 80 foot rear yard setback and a 40 foot side yard setback. The Applicant is proposing a 30 foot rear yard setback and a 37 foot side yard setback for an existing garage.

The standard to be used in determining whether a Special Exception will have an adverse impact and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have an adverse effect above and beyond those inherently associated with such a Special Exception use, irrespective of its location within the zoning district. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981).

The testimony introduced by the Applicant and his witnesses was that he has owned and lived on the property for approximately 10 years and that denial of the Special Exception would require him to either terminate the business or locate commercial property on which to operate the business. The Applicant also introduced testimony that he helps maintain Emrick Lane.

Conversely, many area residents appeared and testified that the proposed use would have a particularly adverse impact at the particular location because it is located on a privately owned, privately maintained gravel road which is in poor condition. One area resident testified that impact is further exacerbated by the length of the Applicant's on-site driveway, which the Applicant uses once he turns off Emrick Lane onto his property. The evidence indicates that his driveway is directly adjacent to his neighbor's property, who indicates she is greatly impacted by the use of commercial vehicles on both Emrick Lane and the Applicant's on-site driveway.

It is the finding of the Hearing Examiner that the proposed use on the subject parcel will have a greater impact at that location than elsewhere in the zoning district because the subject parcel is located on a private road, the road itself is in poor condition, and because the Applicant's driveway is directly adjacent to a neighbor's property.

Therefore, it is the recommendation of the Hearing Examiner that the requested Special Exception be denied.

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The Applicant has also requested two area variances; one to the required 40 foot side yard setback and the second variance to the required 80 foot rear yard setback. These variances are the variances which are set forth in the Code if the Applicant uses the garage commercially. The Applicant is proposing a 37 foot side yard setback and a 30 foot rear yard setback.

Section 267-11 permits variances, provided the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.

As indicated above, the only evidence introduced by the Applicant is that he has owned the property for the last 10 years, that moving his business from the property would require him to rent commercial property, and that he helps maintain Emrick Lane. The Applicant did not introduce evidence that the property is unique or that there were topographic conditions which required construction of the garage in its present location. The evidence indicates that the garage was constructed without a permit and the Applicant began operating his business on the property without obtaining a permit.

It is, further, the finding of the Hearing Examiner that any hardship which the Applicant has incurred is the result of his own actions by failure to obtain appropriate permits prior to the construction and commencement of the business operation in the garage.

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Therefore, since the Applicant has failed to meet the burden as set forth in Section 267-11, it is the recommendation of the Hearing Examiner that the variances be denied. The Applicant can continue to use the garage as an accessory building which only requires a 10 foot side yard and a 10 foot rear yard setback. However, if the garage is involved in the Applicant's business activities, then a rear yard setback of 80 feet and a side yard setback of 40 feet is required.

Date JANUARY 19, 1999

L. A. Hinderhofer
Zoning Hearing Examiner